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In the Matter of)	
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Framework for Broadband)	GN Docket No. 10-127
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Internet Service)	
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TechAmerica hereby submits these comments to the Federal Communications Commission (“Commission”) in regard to the Commission’s Notice of Inquiry (“NOI”) concerning its legal framework over broadband Internet service.¹ Specifically, TechAmerica is focusing its attention on the Commission’s request for comment regarding how it should “ensure privacy for broadband Internet service users...” under the FCC’s current legal classification of broadband Internet access service. TechAmerica’s members have a vested interest in protecting the privacy of Internet users and also ensuring that the Internet remains a vibrant medium of communication and e-commerce. TechAmerica is pleased to be able to file comments on their behalf in this proceeding.

TechAmerica is the leading voice for the U.S. technology industry, which is the driving force behind productivity growth and jobs creation in the United States and the foundation for the global innovation economy. Representing approximately 1,200 member companies of all sizes from the public and commercial sectors of the economy, TechAmerica is the industry’s largest advocacy organization and is dedicated to helping members’ top and bottom lines. It is also the technology industry’s only grassroots-to-global advocacy network, with offices in state capitals around the United States, Washington, D.C., Europe (Brussels) and Asia (Beijing). TechAmerica was formed by the merger of the American Electronics Association (AeA), the Cyber Security Industry Alliance (CSIA), the Information Technology Association of America (ITAA) and the Government Electronics and Information Association (GEIA).

¹ *Framework for Broadband Internet Service*, GN Docket No. 10-127, Notice of Inquiry (rel. June 17, 2010) (Broadband NOI).

TechAmerica's members include: manufacturers and suppliers of broadband networks and equipment; consumer electronics companies; ICT hardware companies; software and application providers; systems integrators; Internet and e-commerce companies; Internet service providers; information technology government contractors; and information technology consulting and sourcing companies.

Privacy Policy and the FCC

TechAmerica appreciates the FCC's desire to protect the privacy of users of broadband Internet services. Indeed, broadband adoption cannot grow if consumers do not feel comfortable engaging in communications and e-commerce online. However, as the FCC knows, numerous privacy laws affecting telecommunication service providers already exist. These laws include the Communications Act, the Cable Act, the Telephone Consumer Protection Act, and the Electronic Communications Privacy Act, to name a few. And TechAmerica appreciates the FCC's recognition of the Federal Trade Commission's (FTC) privacy policy efforts.² The FTC is playing a leading role in developing privacy policy in the U.S. and is widely recognized for its online privacy expertise.

Thus, considering the bevy of privacy-related laws currently in place as well as privacy policy efforts underway at the FTC and Congress, TechAmerica believes that the FCC should not use this particular NOI as a vehicle for reviewing the FCC's privacy policies.

If the FCC, however, decides at this time to pursue additional approaches to ensuring privacy for broadband Internet service users (regardless of the legal

² Broadband NOI ¶139.

classification of broadband Internet access service), TechAmerica requests that the FCC take certain considerations under advisement.

Third-Party Applications

First, in no way should the FCC hold broadband Internet access providers liable for the actions of third-party applications that violate basic privacy and security standards. Doing so will stifle innovation and contradict 47 U.S.C. § 230(c), which has been critical in facilitating innovation. Moreover, such a result would also conflict with the well-established ISP liability immunity provisions in the Digital Millennium Copyright Act (17 U.S.C. § 512).

If platform providers are required to assume responsibility for the actions of third-party application developers, the likely result will be fewer applications available to users at higher costs and far less innovation. The vast and robust array of content and applications that are currently available to consumers would almost certainly be reduced, as platform providers would assume a more aggressive gatekeeper posture in reviewing third-party applications.

Consumer Expectations of Privacy

Secondly, TechAmerica cautions the FCC that consumer expectations of privacy online are not well-understood. The principles and standards that might articulate consumer expectations of privacy are necessarily contextual, and tend to vary based on a variety of factors (e.g., sensitivity of data, proposed use, etc...). Indeed, the FTC is exploring this very issue as a result of its privacy roundtable conferences held earlier in the year. The FCC should likewise recognize the complexity of consumer online privacy.

Technology Neutrality

To the extent the FCC considers additional approaches to ensure consumer privacy online, it should avoid identifying specific technologies in a way that would either imply endorsement of such technologies or have the unintended consequence of discouraging the development and adoption of other privacy-enhancing technologies. To be sure, broadband is only one technology that is part of a much broader technology ecosystem, and addressing privacy issues narrowly may have limited value. Thus, the FCC should tread carefully and remain cognizant of any unintended consequences the imposition of a privacy regime on broadband Internet access providers may have on interconnected broadband technologies, platforms, devices or applications.

Conclusion

TechAmerica supports the FCC's goal of ubiquitous broadband deployment and protecting Internet users' privacy is necessary towards achieving that goal. However, in light of the varied privacy laws already in place and the current privacy policy initiatives underway at the FTC and Congress, the FCC should exercise extreme prudence in seeking the "best approach" for ensuring Internet users' privacy, regardless of the legal classification of broadband Internet access service.